Emory Nursing Home, Inc. d/b/a Emory Convalescent Home *and* Health Care Employees Local #1348 of the Laborers International Union of North America, AFL-CIO

Emory Nursing Home, Inc. d/b/a Emory Convalescent Home *and* Health Care Employees Local Union 1348, affiliated with Laborers' Intl. Union of No. America, AFL-CIO, Petitioner. Cases 10-CA-15914, 10-CA-15947, and 10-RC-12106

February 26, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

On June 29, 1981, Administrative Law Judge Hutton S. Brandon issued the attached Decision in this proceeding. Thereafter, the Respondent and the Charging Party filed exceptions and supporting briefs.[1]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[2] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified, and hereby orders that the Respondent, Emory Nursing Home, Inc. d/b/a Emory Convalescent Home, Atlanta, Georgia, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order,[3] as so modified:

Substitute the following for the last paragraph in the recommended Order:

"IT IS FURTHER ORDERED that the representation case be remanded to the Regional Director for disposition as set forth in the Administrative Law Judge's Decision and that the complaint be dismissed insofar as it alleges violations of the Act other than those found above."

2. Substitute the attached notice for that of the Administrative Law Judge.

[1] Respondent has requested oral argument. This request is hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties. We also deny Respondent's motion for a remand and rehearing as Respondent has failed to present any justification for granting such motion.

[2] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

In accepting the Administrative Law Judge's finding that Lark's discharge was discriminatory, we rely on the fact that Lark openly engaged in union activities on the premises and distributed union cards to people on break and as they entered the building. In conjunction with the "small plant" doctrine, we infer Respondent had knowledge of Lark's union activities.

[3] In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT interrogate our employees concerning their own, or other employees', membership in, or activities on behalf of, Health Care Employees Local #1348 of the Laborers International Union of North America, AFL-CIO, or any other labor organization.

WE WILL NOT tell employees that the above-named union, or any other labor organization, would do nothing for them.

WE WILL NOT threaten to withhold or freeze any wage increases because the employees engage in union activities.

WE WILL NOT threaten employees that the nursing home will be closed if they select a union to represent them.

WE WILL NOT request employees to attend union meetings and report back concerning such meetings.

WE WILL NOT discharge, evict, or otherwise discriminate against any of our employees because of their membership in, or activities on behalf of, the above-named union, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act.

WE WILL offer Barbara Holman, Stanley Lark, and Diane Ward immediate and full reinstatement to their former jobs or, if their jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and WE WILL make them whole for any loss of earnings, plus interest, they may have suffered as a result of our discrimination against them.

EMORY NURSING HOME, INC. D/B/A EMORY CONVALESCENT HOME

DECISION

STATEMENT OF THE CASE

HUTTON S. BRANDON, Administrative Law Judge: This case was heard at Atlanta, Georgia, on February 23-26, 1981. The charge in Case 10-CA-15914 was filed by Health Care Employees Local #1348 of the Laborers International Union of North America, AFL-CIO, herein called the Union, on June 9, 1980,[1] amended July 14, while the charge in Case 10-CA-15947 was filed by the Union on June 16 and amended on July 14. An order consolidating cases and a consolidated complaint and notice of hearing issued on July 29 alleging violations of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, herein called the Act, by Emory Nursing Home, Inc. d/b/a Emory Convalescent Home, herein called the Respondent or the Employer, in the discharge of five employees: Dianna Middlebrooks, Barbara Holman, Stanley Lark, Diane Ward and Betty Hudson. The complaint further alleges a number of independent violations of Section 8(a)(1) of the Act by the Respondent during various dates in April, May, and June.

The Union also filed a representation petition in Case 10-RC-12106 on May 5. An election was conducted on June 20, and challenges were made to the ballots of the five discharged employees named above and involved in the unfair labor practice cases and one additional employee. No objections to the election were filed, but the challenged ballots were determinative. On July 15 the Regional Director for Region 10 issued a report on challenged ballots recommending that the challenge to the ballot of the one employee not involved herein be overruled in view of a stipulation by the parties as to the eligibility of the employee, but found that the resolution of the other five challenged ballots of the employees involved in the instant unfair labor practice cases was dependent upon the disposition of the unfair labor practice issues. On August 15 the Board adopted the Regional Director's recommendations and ordered a hearing on the five challenged ballots before an administrative law judge. On August 26 the Regional Director issued an order consolidating the representation case with the two unfair labor practice cases for hearing.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel, the Respondent, and the Union, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a Georgia corporation with an office and place of business in Atlanta, Georgia, where it is engaged in the operation of a nursing home. The facts alleged in the complaint and admitted in the Respondent's answer establish that its purchases from outside the State of Georgia affect commerce within the meaning of Section 2(7) of the Act and that it meets the Board's standards for asserting jurisdiction over proprietary nursing homes.[2] The complaint alleges, the Respondent's answer admits, and I find and conclude that the Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

The complaint also alleged, the Respondent's answer admitted, and I find and conclude that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE UNFAIR LABOR PRACTICES

A. *The Discharges*

1. Dianna Middlebrooks

Dianna Middlebrooks was employed by the Respondent as a nurses aide on March 21, prior to the beginning of any union activity at the Respondent's facility. While there was some testimony that the union campaign and activity began around the first of April, the record is devoid of the exact date such activity began or the kind of activity involved in the initiation of the campaign nor was there evidence of which employees took the first steps toward an organizational campaign. It was Middlebrooks, however, who attributed the first acts of coercive interrogation to the Respondent. Thus, Middlebrooks testified that "a little" after she was hired, M. E. Hill III, the Respondent's chief executive officer and administrator, in the back ward of the nursing home in the presence of a patient identified only as "Mary," asked Middlebrooks if she knew anything about the Union

[1] All dates are in 1980 unless otherwise stated.

[2] *Faye Nursing Home, Inc., d/b/a Green Oak Manor*, 215 NLRB 658 (1974); *University Nursing Home, Inc.*, 168 NLRB 263 (1967).

being in the nursing home. She answered negatively and Hill's only response was that she was doing a good job. On another occasion, which Middlebrooks could place only as occurring within a matter of weeks of the first question about the Union, Hill asked Middlebrooks in a patient's room exactly what she knew about "the Union." Middlebrooks replied that she did not know exactly what he was talking about. Hill then left the room.

Middlebrooks conceded that there were no union meetings prior to the time she was discharged on April 21. In addition, there was no union literature passed out prior to that time. The only overt union activity Middlebrooks engaged in before her discharge was her signing of a union authorization card which was given to her by her sister, Nancy Middlebrooks, also an employee of the Respondent, in the Respondent's parking lot on April 18. It appears that Middlebrooks' last day of work was April 19, since she was absent from work on April 20 due to car trouble, a problem which she reported to her charge nurse, Betty Hudson, on that day. Middlebrooks was not scheduled to work on April 21. She was telephoned by Hill on April 21, but did not return his call until the next day prior to her normal worktime. At that time Hill told her that he could not tolerate her being off and he had to let her go. Hill testified that Middlebrooks was discharged early in her employment because it appeared that she was not dependable since she had a tardiness and attendance problem. Hill further testified that he had warned her every 2 or 3 days about her tardiness, and twice had warned her about her coming in late and falsifying the sign-in sheet by putting down the time she should have reported to work. He testified he put a written warning in her file to this effect. Rose Johnson, the Respondent's director of nursing, also testified that she had talked to Middlebrooks several times about being late. Betty Hudson, the charge nurse on Middlebrooks' shift, testified she was not questioned regarding absences or tardiness by Middlebrooks.

Hill denied that he had interrogated Middlebrooks about the Union in late March or that he had interrogated any employee about the Union. According to Hill, he knew nothing about the union campaign until April 29 when he found union literature at the nursing home.

The General Counsel argues, based on Middlebrooks' testimony, that Middlebrooks had been late on only two occasions and absent only once during her employment thus providing an insufficient basis for discharging her. Because of the interrogation of Middlebrooks by Hill, and the absence of a valid basis for discharge, the General Counsel contends the discharge was pretextual. He asserts that knowledge of Middlebrooks' union activities and sympathies can be inferred from her response to Hill's unlawful questioning of her as well as the small size of the nursing home utilizing about 20 employees. The General Counsel further speculates that Helen Brown, a charge nurse, who testified for the Respondent, informed the Respondent about employees' union activity. However, there is no record support for this contention.

I found Middlebrooks unpersuasive in demeanor. On cross-examination she disclosed some uncertainty about Hill's questioning of her about the Union.[3] Moreover, I find, in the absence of any evidence of actual union activity prior to the time that she signed a union card on April 18, that Middlebrooks' claim of questioning by Hill in late March and early April inherently incredible. The questioning by Hill is all the more incredible, since Middlebrooks could give little in the way of details about the alleged questions. In discrediting Middlebrooks, I have carefully considered the denials by Hill, and while I find *infra* that Hill was not above engaging in unlawful questioning, I am not persuaded that at the times Middlebrooks attributed the unlawful questioning to him, he was in any way aware of union activity.[4]

Since the record shows that Middlebrooks signed a union card on April 18 and was discharged on April 21 after having an absence on April 20, there is considerable suspicion because of the timing that the discharge was pretextual and related to her union activity. This suspicion is increased by Middlebrooks' denial of any warnings to her regarding her tardiness, for falsifying the sign-in sheet, or for any other reason. It is further increased by the Respondent's union animus as reflected by violations of the Act found *infra*. However, since I do not credit Middlebrooks' testimony that Hill unlawfully interrogated her, and since I find no evidence that Hill was aware of union activity generally prior to Middlebrooks' discharge, or of her union inclinations or activities in particular, I find that the General Counsel has not established a *prima facie* case of a violation of Section 8(a)(3) and (1) in the discharge of Middlebrooks. It appears that, while Middlebrooks' instances of tardiness and absence may well have been few and would not have warranted the discharge of an older employee, they nevertheless could have been sufficient to provide the basis for the discharge of one employed only a month. I shall recommend that the allegations of the complaint with respect to Middlebrooks be dismissed.

2. Barbara Jean Holman

In chronological order, Barbara Jean Holman was the next person alleged to have been discriminatorily discharged by the Respondent. Holman had initially begun work for the Respondent in late 1973 and quit for a brief period in August 1974 without notice after being called out of town due to a personal emergency. She was asked to return to work by Hill sometime in 1974. She resumed work for the Respondent and worked until her discharge on May 5. At that time she was working as a combination nurse's assistant and activity director.[5]

[3] In finding Middlebrooks unconvincing, I have fully considered her explanation on the stand that a recent death in her family had served to distract her.

[4] In this regard, I have also considered the testimony of charge nurse Betty Hudson, discussed *infra*, in which she attributed unlawful questioning to Hill *about* April 20. Hudson only approximated the date and did not explain why she thought April 20 might be the correct date. Accordingly, and although I found Hudson generally credible, I conclude the record does not establish that Hill was aware of union activity prior to the time he admitted knowledge of such activity.

[5] Notwithstanding the title of activity director, the Respondent stipulated that Holman was not a supervisor within the meaning of the Act.

Holman related that she heard about the union activity sometime in early April and signed a union authorization card "about April 15."[6] There is no dispute that Holman was dissatisfied with the pay she received from the Respondent, and she admittedly told Hill the first part of April that she was looking for another job and had, in fact, applied for work at an insulation manufacturer.

Holman testified that on May 5 Hill telephoned her at her home after she had completed her regular day shift at the nursing home. In the conversation Hill offered Holman the position of full-time activity director. He added that, if she did not want the job full time, he would continue to use her as a full-time nurse's assistant, but that if she chose the latter position, there would be no increase in her pay. Further in the conversation, Hill, still according to Holman, asked to talk to her off the record. Hill then asked her if she was aware of the union activity at the nursing home and she replied that she was. He then asked her if she knew the people who were involved in it and Holman replied to the effect that she probably knew some of them. He asked her to name them, but she refused. He asked if she was involved and she equivocated. He asked if she had signed a union authorization card and again she equivocated. Hill stated that, if he had to hire a lawyer to negotiate with a union, it would cost him $80 per hour, and that while he had her June raise "all set up," if he had to negotiate, it would go for legal fees and there would be no June raises. He added that he did not want to see the employees give their money to the Union because "they are going to take your money and not do anything because we are too small." The conversation then turned again to her choice about the activity director job or the nurse's assistant job, and Holman told Hill that she would talk the matter over with her husband and let him know the next day. Hill concluded by telling Holman that he regarded her as a supervisor and said that, if she talked to anybody about union activities at the Respondent, she would be liable with the nursing home to a lawsuit and would have to tell them that it was off-the-record talk.

About 4 hours after the above telephone conversation and still on May 5, Hill again telephoned Holman. This time, according to Holman, Hill told her that he might be doing the wrong thing and maybe he was not, but that Holman was fired, that he had hired someone to replace her. He apologized and told her that he felt like a dog doing that to her, but he felt that she would be happier working closer to home,[7] wished her the best and hung up.

The following day Holman received a separation notice[8] from the Respondent stating:

> Barbara Holman told us back in April 80 she was job hunting and would quit. We began interviewing Activities Directors. Mrs. Holman was offered Nursing Assistant full time or Activities Director full time. Mrs. Holman was and is an excellent employee. It was just felt under the circumstances she could not do her best.

Holman filed a claim for unemployment compensation and the Respondent opposed it claiming that she had been discharged for having verbally threatened and abused patients and also because her looking for another job had affected her job performance.[9]

The General Counsel contends that Hill violated Section 8(a)(1) of the Act through Hill's interrogation of Holman regarding her own and other employees' union activities, his request that she identify union supporters, his expression to her of the futility of the employees' organizational activities, and his threat to withdraw scheduled raises if the employees organized. The General Counsel also claims that Hill's comments as reported by Holman also constitute an unlawful promise of more benefits and job opportunities if they refrain from union activity. With respect to the 8(a)(3) allegation involving Holman, the General Counsel contends that Holman's equivocation in response to Hill's questions of her about the extent of her knowledge about union activities generally and her own involvement in particular was sufficient to alert the Respondent to her union sympathies. Thereafter, the discharge of Holman, after having offered her a permanent position as an activities director, and after stating on the separation notice that she was a good employee, was clearly discriminatory and based on union considerations, according to the General Counsel. The Respondent's shifting position in the hearing herein and before the State Employment Security Agency, the General Counsel contends, further supports this conclusion.

Hill in his testimony for the Respondent denied, in effect, all of Holman's testimony. He testified generally that he had had to "counsel" Holman in late 1979 and again sometime in April about her "attitude"; but while he related that he noted or recorded some of the counselings, no written records of such counselings were offered in evidence. He further contended that on one occasion he had counseled Holman after a charge nurse, Len Stennes, had complained that Holman had cursed a patient.[10]

According to Hill, he telephoned Holman in mid-April to offer her full-time employment in either the nurse's assistant job or the activities director job because "I felt like she felt pushed" in trying to do both jobs on a combined basis. Hill was vague regarding Holman's exact response, but testified he concluded she did not want either job. Asked why, if he had complaints about Holman, he

[6] Holman's union authorization card was not produced or offered in evidence.

[7] It is undisputed that Holman had to drive several miles to her work with the Respondent and had admittedly expressed some dissatisfaction with this problem, but she had endured it for the several years of her employment with the Respondent.

[8] G.C. Exh. 3. The Respondent refused to stipulate the authenticity of this document, but failed to rebut Holman's testimony that she had received it.

[9] The State Department of Labor, Employment Security Agency, after hearing, found the Respondent's claims unsubstantiated.

[10] Stennes, presented by the Respondent, testified that in January she had heard Holman threaten an incontinent patient that she would "slap the hell out of him" if he did not stop defecating in his pants. Stennes related she reported the matter to Hill. Holman denied the incident or any counseling from Hill regarding such a matter. Cloe B. Plumb, the daughter of a patient, testified regarding an incident of apparent rudeness on the part of Holman occurring "about April" which Plumb reported to Hill. Holman recalled the incident and conceded in her testimony that she may well have given Plumb cause to believe she was being rude.

offered her a full-time job in either of the two positions, Hill responded that "you overlook a few things on an employee when they are doing a pretty good job."

Hill reflected some concern in his testimony about Holman's looking for work elsewhere and testified he asked her each week about it because there was a regulation requiring the Respondent to have an activities director, and he did not want to be left without one. The extent of Hill's concern in this regard was not reflected in the record, however, for there is no showing that Hill hired any specific individual as activities director before Holman was terminated.

I am convinced that Holman's testimony was truthful and accurate and I therefore credit her where her testimony contradicts that of Hill. Holman was positive and emphatic with respect to the remarks she attributed to Hill in the telephone conversation on May 5. It is not likely that she would have mistaken the date of the call since it was the day of her discharge. Hill's testimony was vague at points and his recall was neither clear nor substantiated by records alluded to but never identified or offered in evidence. I am persuaded also that the substance of Hill's testimony was simply incredible.

It strains credulity that Hill would offer a full-time position in one or another classification for Holman if he was concerned about previous complaints concerning her work. Nor would he have indicated on her separation slip that she was an excellent employee if he had discharged her for cause related to her work. Moreover, it is improbable that he would have offered her the full-time positions if he was concerned that she would subsequently leave employment without notice. Furthermore, if Hill's concern about being left without an activities director was genuine, it is highly improbable that he would have offered Holman a choice between the full-time activities director job and a full-time nurse's assistant job, for had Holman chosen the latter, Hill would still have been without an activities director. It is even more improbable that, absent ulterior motivation, Hill would have discharged Holman without having a replacement for her in the activities director job. Yet, aside from Hill's bare assertion which I do not credit in the absence of the name of the replacement, a reporting date to work, or evidence of the qualifications of the replacement for the job, the record does not establish the actual hiring of a new activities director. It is more likely that the positions were offered to Holman as an inducement to forgo her search for employment elsewhere, but after Holman revealed her union sympathies through her equivocation to Hill's questions about the union activities, Hill decided to discharge her before she had even specifically rejected his offer. This is the only rational explanation for Hill's action since he had known for almost a month that Holman was looking for other employment and he had not discharged her until after his questioning of her about the Union.

Considering the union animus demonstrated by Hill in his questioning of Holman and his other remarks to her, the timing of the discharge following her indication of knowledge of union activities and her further indication of an unwillingness to identify union supporters, and the discharge of Holman for reasons known to the Respondent for a month prior to the discharge, I conclude that the General Counsel has established a *prima facie* case of a violation of Section 8(a)(3) and (1) of the Act with respect to Holman as required under the rationale in *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980). The Respondent, I conclude, has failed to rebut the General Counsel's case. On the contrary, by presenting shifting and contradictory reasons[11] for Holman's discharge, the Respondent has undermined its own position on the legitimacy of Holman's discharge. I conclude therefore that the Respondent discharged Holman in violation of Section 8(a)(3) and (1) of the Act as alleged in the complaint.

I further find and conclude based on Holman's credited testimony that Hill violated Section 8(a)(1) of the Act by coercively interrogating her regarding her union activities and the activities of other employees and by suggesting to her that any wage increase she and other employees were "set" to receive in June would be eliminated by the necessity for hiring a lawyer to negotiate with the Union.[12] I also conclude that Hill's comment to Holman that the Union would take the employees' money and not do anything for them because the Respondent was "too small" was also violative of Section 8(a)(1) because it expressed to her the futility of the employees' organizational efforts. On the other hand, I find Holman's testimony insufficient to establish the other violations of Section 8(a)(1) alleged in the complaint and urged by the General Counsel in his brief.

3. Stanley Lark

Stanley Lark was employed by the Respondent on August 18, 1978, and performed housekeeping, laundry, and maintenance duties for the Respondent. In November 1979, Lark moved into a basement apartment of the nursing home which was provided to him by the Respondent on a rent-free basis as compensation for his extra after regular hours' work performing laundry chores. Lark worked generally under the supervision of Albert Roberts, who was in charge of housekeeping and who was conceded by the Respondent to be a supervisor within the meaning of the Act.

Lark testified that he became engaged in union activity and obtained the signatures of some 15 to 17 employees on union authorization cards prior to his discharge on or about May 26. In addition, Lark attended several meetings at "Everybody's," a restaurant about a block from the nursing home, prior to his discharge. Lark testified that, around May 5, he and Mary Hawkins, a cook, were called into Hill's office where they were confronted by Hill. Hill, according to Lark, asked if he had a tape recorder in his pocket. Lark answered negatively and

[11] The Respondent's belated contention that Holman was discharged in part because of her conduct toward patients and their relatives is obviously inconsistent with Hill's offer to her on May 5 and is contradicted by the description of Holman on the separation notice as an "excellent employee."

[12] While Holman conceded that the Respondent's wage increases were merit increases and that all employees would not receive them automatically, the coercive nature of Hill's remark about the wage increase lies in the fact that it precluded the possibility of an employee earning an increase on merit.

asked Hill "for what?" Hill replied that what he was going to ask them was to be "off the record." Then Hill asked Lark if he was aware there was a union going on in the building at the time, but Lark answered no. Hill further asked, notwithstanding Lark's initial response, if he knew who was trying to get a union in there and Lark again responded negatively. Then Hill told Lark and Hawkins that, if a union came in, he would probably have to close down his nursing home because it was too small even to think about "organizing a union." Hill added that it did not make sense to have a union in there and asked Lark and Hawkins to let him know if they found out anything about "it."

Lark's testimony with respect to the meeting with Hill was substantially corroborated by Hawkins, who was called by the General Counsel. With respect to the remark about closing, Hawkins said that Hill said that, if the employees had a union, the place would have to be closed in 6 months, and that he would have to have a lawyer who would cost him over $80 an hour.

Hill generally denied the questioning attributed to him by Hawkins and Lark. Hawkins impressed me as credible and, while I am not persuaded as to the accuracy of all of her testimony, I am persuaded that it was sincere. Moreover, Hill's calling employees into the office and asking them questions "off the record" about the Union falls into a pattern which is substantiated by the other credible testimony of employees Eva Tompkins, Betty Hudson, Diana Ward, Judy Gholston, and Annie Mapp, all discussed *infra*. Accordingly, I credit the testimony of Lark here as corroborated by Hawkins, and conclude that Hill did question Lark and Hawkins regarding their union activity and the union activities of other employees, did request them to report union activities, and did threaten to close the nursing home if the Union were selected by the employees. In so doing, I conclude the Respondent violated Section 8(a)(1) of the Act.

From his brief, it appears that the General Counsel relies on Hawkins' testimony to establish the complaint allegation that the Respondent offered employees wage increases to report union activities. I find Hawkins' testimony falls far short of establishing a violation of the Act in this regard. While Hawkins did testify that Hill in his remarks to her and Lark referred to a failure of the employees to get a raise in April, he specifically based such failure on the fact that he was broke, and indicated the employees' wages would be raised in June. Hill's remarks regarding raises were not, I conclude, associated with his questions about the union activity and I do not therefore construe his reference to raises as an offer of a benefit to report union activities.

With respect to the discharge of Lark and an additional allegation of the complaint that the Respondent discriminatorily evicted Lark from his apartment prior to the discharge, Lark testified that, about a week after his office discussion with Hill regarding the Union related above, he met with Hill in the solarium of the nursing home where Hill told him that he had planned to fire Lark that morning, but since the individual who he hired (to replace Lark) had not come in, he would fire Lark later on. Lark asked why and Hill replied that Lark had not started doing his job until the last 3 preceding days. Lark asked why he had not been fired earlier if he had not been doing his job, but Hill did not reply. Hill went on to tell Lark that he was going to get a linen service in obviating the necessity for a linen laundry and Lark would have to move out of his apartment. Lark inquired if Hill wanted the keys to the apartment at that point, but Hill told him to suit himself. Lark kept the keys and did not move out of the apartment until several days later. It is not clear from the record whether it was on this occasion in the solarium or another when Hill chastised Lark because a patient, a Mrs. Alexander, had complained that Lark had failed or refused to hang up some personal laundry he had done for her, telling her to hang it up herself.[13] Lark denied that he had told her to hang them herself and testified he had simply left the laundry with her to find some hangers. The record contains no explanation of why, if the case was as Lark claimed, he did not make a timely return with the hangers.

While he denied that he evicted Lark and claimed Lark moved out on his own volition, Hill did not specifically deny the testimony of Lark regarding their solarium conversation or conversations. Lark is therefore credited regarding the remarks he attributed to Hill in such conversations.

Lark testified that on Saturday, May 24, he was told by Hill that "the little bathroom" needs cleaning. Lark told Hill he would take care of it as soon as he completed the task he was then working on. Subsequently, Lark cleaned up the three bathrooms on the main floor and asked a fellow worker, identified only as "Ray," to check the bathrooms over to make sure they were not "messed up" prior to the time Hill came back.

Lark worked the next day, a Sunday, but it does not appear that Hill came in that day. Upon leaving work that day, Lark told charge nurse Helen Brown that he would be late coming in the next day since he was going to use an hour of "in-service."[14]

On Monday, May 26, as he was preparing to sign in late following use of his leave time, Lark was told to report to Hill. Hill took Lark to a downstairs basement bathroom ordinarily used by the male employees which Lark had admittedly not cleaned. Hill told Lark, according to Lark, that he thought he had told Lark to clean that bathroom. Lark responded that Hill had not told him to clean that bathroom, but had told him to clean the bathrooms "up on the floor." Hill responded by saying, "That's it," and "You're fired." Subsequently, Lark was given a separation notice giving the following "circumstances of separation":

> Stanley has been warned about 30 times as to unacceptable work, dress, phone calls, not following directions, being late, being unavailable, etc., about six of [sic] seven of the 30 warnings are documented in Mr. Lark's file.

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[13] Director of Nursing Rose Johnson testified that she was present, however, when Hill talked to Lark about Mrs. Alexander. She did not identify the place where the "talk" occurred.

[14] This was a reference to leave granted in return for equivalent amounts of time spent in off-duty "in-service" training sessions.

Lark denied he had had so many warnings, and testified he was never told written warnings would be put into his file. He acknowledged that Hill once talked to him about dress and had told him not to wear a "wet look" shirt at work. He admitted to having been advised of complaints by two patients about Lark including the complaint from Mrs. Alexander noted above. He admitted to no problems concerning unexcused tardiness, but did admit that he had received complaints from Hill about the receipt of too many personal phone calls at the facility.

The Respondent, through the testimony of Hill, painted a picture of Lark as being a very inadequate, undesirable employee who had to be constantly warned about a number of matters particularly with respect to his dress, his failure to keep up the laundry, his excessive use of the telephone for personal calls, and his tardiness several times during the period prior to his discharge. Hill testified that he had threatened to fire Lark several times if these matters were not corrected. Hill added that he told Lark three, four, or maybe five times that he was putting a reprimand in Lark's file. It was, according to Hill, Lark's failure to clean the downstairs bathroom as Hill had directed him that provoked the discharge.

The Respondent relied on the testimony of Rose Johnson, the Respondent's director of nursing, to substantiate portions of Hill's testimony regarding Lark. Thus, Johnson testified regarding Lark's failure to keep up the laundry, but related initially that this problem occurred in the latter part of 1979 and early 1980.[15] It was not until prompted by a prehearing statement that she gave the Respondent that she recalled the problem actually happened in May. Johnson also testified about an incident involving Lark sometime in March or April when he had failed to shave some patients as instructed. While Johnson said that Lark was "written up" for this incident, the "write up" was never produced and the exact date of the incident was not clearly established on the record.

In order to establish the 8(a)(3) violation with respect to Lark, it was incumbent upon the General Counsel to establish by a preponderance of evidence that the Respondent knew of, or suspected, Lark's union activity and that the Respondent was motivated to discriminate against Lark and discharge him because of that activity. I am satisfied on the record considered as a whole that the Respondent was aware of Lark's union activities. Although the record does not establish direct knowledge of such activity, it is clear that Hill was aware of the union activity generally during the approximately 4 weeks prior to Lark's discharge. Moreover, there were only about 20 employees in the unit so that an inference is warranted here of knowledge of Lark's union activity on the basis of the Board's small plant doctrine. See *Wiese Plow Welding Co., Inc.*, 123 NLRB 616 (1959). Such an inference is particularly warranted here where the credited evidence related above and also discussed elsewhere, *infra*, clearly reveals that Hill was making a determined effort to identify those employees responsible for the union activity. Finally, I have canvassed the record and can find no denial by Hill of knowledge of Lark's union inclinations. Accordingly, I conclude that the record substantiates the inference I hereby draw that Hill was aware of Lark's union activities and inclinations prior to his discharge.

With respect to the merits of the discharge of Lark, I am not so naive as to believe that Lark was without his faults. The record establishes through certain of Lark's own admissions that he was less than an ideal employee.[16] However, what faults he had were of longstanding and had been endured for the period of his employment. Any deficiencies he had in connection with his laundry room work did not happen overnight, and any excessive use of the telephone was not a new matter. The fact that his faults and conduct became sufficiently objectionable to discharge him only after he became involved in union activity renders the Respondent's position on the discharge highly suspect.

The suspicion regarding the Respondent's defense is increased by its failure to document any of the alleged records of counselings or warnings of Lark, even though six or seven offenses were allegedly recorded. Moreover, the Respondent's evidence, and in particular Hill's testimony, is generalized and vague regarding the dates when Lark was allegedly counseled or warned about his conduct.

Considering the timing of the first threat to discharge Lark on or about May 15, after the Respondent became aware of the union activity, the strong union animus demonstrated by Hill in his questioning of employees regarding their union activity and the threats made to them and the Respondent's reliance upon Lark's personal traits and work habits as a basis for his discharge after having been aware of them for a long time clearly establish the requisite *prima facie* case of a violation of Section 8(a)(3) and (1) of the Act in Lark's discharge.

The same factors, I conclude, establish, contrary to Hill's claims otherwise, that Lark was in effect evicted from his basement apartment. Since Hill had decided to use a linen service in place of Lark's laundry work even if he did not specifically tell Lark to vacate the apartment, he could well expect that Lark would have to do so since any apartment rental would thereafter come out of Lark's regular salary. In any event, I credit Lark's testimony that he was told to leave in view of Hill's employment of the linen service, and the record does not otherwise reveal that arrangements were made regarding the linen service prior to Hill's acquisition of knowledge about the union activity. I conclude, therefore, that Lark

[15] The Respondent produced one witness, Frances Swimms, the daughter of a patient who testified her mother had some clothes ruined in the Respondent's laundry in January 1980 and from time to time. While Lark may have done some of the Respondent's laundry during this period, his responsibility for the damage to any patient's clothes was not clearly established.

[16] The Respondent's objections to Lark's manner of "dress" had to do with his apparent inclination toward the effeminate. Indeed, there was testimony, only portions of which were denied by Lark, concerning Lark's wearing of a dress and other feminine attire at the nursing home. The record does not establish that he was so attired during his worktime on the premises. In any event, any disposition of Lark toward transvestism was not a new development and had previously been known to, and tolerated by, the Respondent. Hill himself testified he had seen Lark in what appeared to be a dress, but failed to specify the date this was observed. Obviously, it did not prompt an immediate discharge.

was evicted and that the eviction was in response to his union activity. In reaching this conclusion, I have fully weighed the testimony that Lark had related to others, e.g., Albert Roberts, that he planned to move out, as well as Lark's own admission that he had so told some employees. However, I accept and credit Lark's further explanation that the statement was based on his intention to move out after he had saved sufficient money to buy his own furniture. That condition had not been filled prior to the time he actually moved. Lark's intention to move was thus independent fron Hill's termination of the laundry-apartment arrangement and is no defense to the Respondent's act of discrimination in Lark's eviction.

Whether or not the Respondent violated Section 8(a)(3) of the Act in Lark's discharge depends upon whether the Respondent has rebutted the General Counsel's *prima facie* case by showing that Lark would have been discharged notwithstanding his union activity because of his failure to clean the "downstairs bathroom" as directed by Hill. Resolution of this ultimate issue turns on the credibility issue of whether Lark was specifically told to clean the downstairs bathroom.

Here again I must credit Lark that he was not so told, not only because of his earnestness in demeanor, but also because Hill's testimony to the contrary was not corroborated by Albert Roberts even though Hill specifically identified Roberts as being present when the instruction was given. While Roberts acknowledged that perhaps Hill had given instructions in the past to clean up the downstairs bathroom most of the time, that area was neglected. And Roberts could recall no specific instruction to Lark by Hill to clean it up immediately prior to Lark's discharge. It is improbable, notwithstanding Robert's professed possession of a poor memory, that as a supervisor he would have failed to recall an instruction given by his superior which became the basis for an employee's discharge. It is more likely that the instruction was not given. Accordingly, I conclude that Lark was not told to clean the downstairs bathroom and his failure to clean it provided an unwarranted basis for his discharge.

It follows, and I conclude, that the Respondent has failed to rebut the General Counsel's *prima facie* case by showing that Lark would have been discharged without regard to his union activities. I therefore find that the Respondent violated Section 8(a)(3) and (1) of the Act in discharging Lark. I further conclude that the Respondent also violated the Act in evicting him.

4. Diane Ward

Diane Ward was initially employed by the Respondent in June 1979, and after quitting once came back the following December and worked until her discharge on June 5. She worked as a nurse's assistant generally on the 3 to 11 p.m. shift with one other nurse's assistant and charge nurse Betty Hudson.

Ward became involved in the union activity after it began, attended union meetings, and passed out some union authorization cards. Ward testified without contradiction that on one occasion, the date not specified, she had torn up in Hill's presence some literature passed out by Hill related to the union campaign. Hill's response was a grin, according to Ward. Ward also testified, still without contradiction, that prior to her discharge, Hill had complained to her about advising patients that she was going to be fired for her union activity, stating that she had a "big mouth." Accordingly, and because the record contains no denial by Hill of knowledge of Ward's union sympathies prior to her discharge, I conclude that the Respondent must be charged with such knowledge.

According to Ward, on May 5 or 6 she was called into Hill's office where Hill told her the Union was coming in and asked her if she knew anything about it and who was for it. Ward told him that she did not know anything about it. Moreover, she testified that Hill offered her a 50-cent raise. Her response was that she already had been given a 10-cent raise, but Hill replied that she could get more. While Ward related that the raise offer occurred after Hill broached the subject of the Union, it was before his question of who was *for* the Union. The record does not reflect exactly how the conversation ended.

Ward further related that about 2 weeks later Hill asked her to come to his office again, and there he asked her if she had found out any information about people who were for the Union. Upon her negative response, Hill told her that if she heard anything to let him know. She thereupon left the office.

Hill, in his testimony for the Respondent, denied that he had called Ward into his office and further denied offering her a 50-cent wage increase to report union activity.

Ward testified in conclusionary terms and her recollection regarding the total conversation she had with Hill in his office on the first occasion she testified about was generally poor. However, Hill's questioning of Ward fits into a pattern of conduct established by the credited testimony of other employees. Accordingly, I am persuaded that Ward's testimony with respect to the questions by Hill is worthy of belief and I credit it over Hill's less persuasive denials. However, Ward's testimony regarding the offer of a 50-cent wage increase by Hill was confused, disjointed, and vague, and, I conclude, unreliable.[17] I therefore find the evidence insufficient to establish an unlawful offer of a wage increase to encourage a report on union activity.

With respect to the events leading to her discharge, Ward testified that she learned from charge nurse Betty Hudson around May 7 that Hudson had been approached by management about certain missing medications. Subsequently, on or about May 14, Ward was called into Hill's office where she met with Hill, Hudson, charge nurse Helen Brown, and Nursing Director Johnson. Hill accused Ward of stealing narcotics, specifically, two

[17] A trier of fact is not required to discount everything testified to because he does not believe all of it. "Nothing is more common than to believe some and not all of what a witness says." *Edwards Transportation Company*, 187 NLRB 3, 4 (1970), enfd. *per curiam* 437 F.2d 502 (5th Cir. 1971). Ward's testimony contained several contradictions and, as already related, she exhibited poor memory and confusion. Thus, while I find her testimony not entirely reliable, I am persuaded that such unreliability is more the product of confusion than an effort to prevaricate.

Tylox pills,[18] a controlled narcotic. Ward denied that she had stolen any narcotics, and told Hill that if she were going to steal two pills, why would she not have stolen the whole bottle? Further, she offered to take a polygraph examination at her own expense.

In the same conversation with Hill, according to Ward, Hill alluded to a number of other pills missing over a period of time. Hill did not indicate to Ward his basis for suspecting her involvement in any drug thefts, according to Ward. Controlled substances, i.e., prescription narcotics, were normally kept in a locked narcotics box and were not accessible to nurse's assistants who had no responsibilities for dispensing drugs. Certain drugs which had not been dispensed to patients for whom they were prescribed for one reason or another were kept in Johnson's office in her desk prior to their disposal.

Subsequently, around June 3, Ward was given a note (G.C. Exh. 9) by Hill containing a date (June 5), time, and place where Ward was to take a polygraph examination. Hill explained to Ward at the time that he had arranged for the examination with Barry Twilley, a state narcotics agent. That evening, after she had received the note, Ward called Johnson to inquire what pills exactly she was accused of taking. In the conversation Ward inquired of Johnson about Twilley, and Johnson gave Ward Twilley's home telephone number and said that Twilley was a narcotics man and a friend of Hill. Thereafter, according to Ward's further testimony, Ward telephoned Twilley and discussed the polygraph test with him and what she was accused of. Twilley, she testified, told her he did not know anything about "no pills" that she was supposed to have taken, but if she took the polygraph test, she was sure going to be found guilty.

The next day Ward told Hill she was not going to take the polygraph test, related what Twilley told her, and explained that she had talked to her lawyer[19] and some other people and concluded she was not going to take the test. She then asked if Hill was going to fire her and he responded negatively.

On or about June 5, Hill telephoned Ward at her home and advised her of her termination noting that she had failed to show up for the polygraph examination. Ward pointed out she had told him 2 days earlier that she was not going to take the test and asked why she had not been fired then. Hill, Ward related, did not respond specifically to this question. Ward testified that the failure to take the polygraph examination was the only factor related to her by Hill as the basis for her discharge.

Sometime later, however, Ward received a termination slip stating as the reason for her separation:

> Mrs. Diane Ward, the evidence shows, obtained drugs from the nursing home by several means, illegally. This was reported to the narcotics people, who in turn arranged for a polygraph test, which Mrs. Ward refused to take. This is listed in our policies as reason for dismissal.

Ward denied in her testimony that she had stolen any drugs from the Respondent and claimed that the refusal to take the polygraph test was based on Twilley's statement that she would be found guilty anyway, and the advice from others not to take the test. Ward's denials of the theft of the drugs was convincingly delivered and I credit it.

The General Counsel argues that Ward's discharge was without justifiable cause and was pretextual and violative of Section 8(a)(3) and (1) of the Act.

Notwithstanding the stated reason for the discharge on the separation notice, the Respondent relies on other grounds for Ward's discharge in its defense. Thus, Respondent offered evidence through Hill that a partial basis for Ward's discharge was her abuse of patients, and Hill testified he had counseled Ward in May (he thought) about threatening to slap a patient by the name of Robins. Assistant Director of Nurses Louise Brooks had reported the matter to Hill. In keeping with his policy of warning an employee a few times if the "infraction" is not serious before writing the employee up or terminating him, Hill testified he "counseled" Ward not to abuse patients.[20]

With respect to the missing drugs, Billy James Boyd, a pharmacist and drugstore owner who acted as a pharmacy consultant to the Respondent, testified that he was advised of some missing pills at the nursing home by Hill. In addition to missing 2 Tylox pills, Hill had told Boyd that about 15 Quaalude (described as a sleeping pill) and 5 or 6 Darvoset N-100 pills (narcotics) were missing. Boyd said it was not until a week later that Hill told him he suspected Diane Ward of taking the pills and explained the suspicion was based on, according to Boyd's recollection, the fact that she was the one who had keys to the office. Boyd testified he told Hill that Ward, who was known to Boyd and had been a customer of his, had three times in about a 6- to 8-week period in early 1980 asked Boyd to sell her controlled drugs, pain killers, which could not be dispensed without a prescription. Each time he had refused.[21] Thus, Boyd suggested to

[18] Ward concedes that she had been on duty at the time the Tylox pills were delivered on May 2 and had helped Hudson to count the pills. Hill further conceded that she looked up the nature of the drug in the physician's drug reference book in Johnson's office.

[19] In her testimony herein Ward conceded that she had not talked to a lawyer.

[20] Ward in her testimony denied threatening to slap a patient or being accused of it. She further denied ever having been reprimanded or counseled of any offense. Louise Brooks, who only began work at the Respondent in April, testified in direct contradiction to Ward's denial that she had witnessed an incident on May 2 involving Robins and had reported the matter to Johnson. Johnson had told her to "write up" the incident. Brooks did so, and it was the first "write up" she drafted on any employee at the nursing home. There was no evidence that Ward was shown this writeup, however. Brooks also testified about an incident occurring on May 11 involving a loud complaint by Ward about no one getting a particular patient out of bed for exercise. This matter Brooks also reported to Johnson. Brooks' testimony was delivered in a convincing and emphatic manner and I find it more credible than Ward's. I am not persuaded, however, that these incidents played a part in the Respondent's decision to discharge Ward since it was not alluded to in her separation notice or otherwise disclosed to her as the basis for the discharge beforehand. On the other hand, it tends to reflect a shifting defense by the Respondent which casts doubt on the legitimacy of its asserted basis for discharging Ward.

[21] Hill testified that a doctor who had tended patients at the nursing home, Dr. J. Sippada, had also advised him that Ward had attempted to

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Hill that the matter should be called to the attention of Rhett Paul, a pharmacy consultant for standards and licensing for the State. Thereafter, Boyd called Paul, who in turn referred Boyd to Barry Twilley, an agent of the Georgia State Drugs and Narcotics Agency. Twilley thereafter telephonically contacted Hill and discussed the matter with him.

Twilley, called by the Respondent, denied that he had any friendship with Hill, and indeed denied that he had ever even met Hill previously. He testified he discussed with Hill whether Ward could be "set up"; i.e., caught in the act. However, this possibility was eliminated since Hill had already confronted Ward[22] and she presumably would be alert to such a plan. Twilley suggested that perhaps Ward might be dismissed outright without prosecution, but apparently this suggestion was rejected. During one of his conversations with Hill, Twilley testified he suggested a polygraph examination which, if Ward refused to take, would provide a basis for her discharge. Twilley added that he made the arrangements for the polygraph examination and that subsequently Ward contacted him personally about the matter and assured him she would be there. Twilley specifically denied telling Ward that she would be found guilty if she took the polygraph examination. While he kept the appointment for Ward's polygraph examination, she failed to appear. Thereafter, he reported Ward's failure to appear to Hill and advised Hill that he was free to terminate Ward if he was so inclined after checking with his attorney. Although Twilley related he had six to eight different telephone conversations with Hill, the union activity at the nursing home was not discussed.

Ward had denied in her testimony that she made any special request of Boyd or Dr. J. Sippada for any controlled substances, although she had been under Sippada's care in 1979. Weighing the testimony of Boyd and Twilley against that of Ward, I find Boyd and Twilley's testimony more credible. Each was more likely to be disinterested in the outcome of this proceeding. Moreover, their testimony was delivered in a forthright and convincing manner.

In view of Ward's union activity, the Respondent's knowledge thereof, Ward's denial of involvement of any drug thefts, the absence of clear evidence showing that she was so involved, all considered in the context of the Respondent's union animus demonstrated by its numerous violations of Section 8(a)(1) of the Act, as well as its proclivity to discharge union activists as shown in the case of Lark and Holman, a clear *prima facie* case of unlawful discrimination by the Respondent in Ward's discharge has been, I conclude, established. The issue, then, is whether the Respondent has rebutted this *prima facie* case by establishing that Ward would have been discharged without regard to her union activity or inclinations. The resolution of this issue turns largely upon the reasonableness of the Respondent's belief of Ward's responsibility for the drug loss. It is quite clear that the record herein does not establish that Ward actually took the missing drugs. Moreover, notwithstanding my conclusions with respect to the unreliability of other aspects of her testimony, Ward's denial that she took any drugs from the Respondent was emphatic and, I conclude, convincing.

In considering the reasonableness of Hill's suspicion of Ward, certain other testimony must be noted. Thus, charge nurse Mary Lewis testified that Ward once asked her for a Percodan pill, a narcotic. Lewis refused the request, and Ward reportedly shrugged her shoulders in response. The record does not indicate whether Ward explained to Lewis her need for the pill nor does it establish when the request was made exactly, or whether Lewis ever told Hill about the matter prior to Ward's confrontation about drug thefts.

Charge nurse Helen Brown, called by the Respondent, testified that she had supervised Ward at times on a 3 to 11 p.m. shift, and related that sometime in January Ward asked her for a Darvoset N-100 pill. Brown, explaining it was a controlled drug, refused. Ward responded that charge nurse Betty Hudson had given her one, but Brown persisted in her refusal. Brown did not indicate whether Ward explained why she needed the drug. While Brown testified she reported the matter to Hill, it does not appear that Hill took any specific action on it. Ward in her testimony denied asking Brown for the pill.

One additional matter relating to Ward's use of pills was related by Johnson in her testimony. Johnson testified to a conversation with Brown, Hill, Ward, and Hudson in which Brown had asserted that she had observed Ward take four extra strength Tylenol tablets on one occasion. While Tylenol is an over-the-counter product not requiring a prescription, the normal dosage is two every 4 hours rather than four. Ward conceded herein and in her testimony before the State Unemployment Commission hearing that she had in fact taken four Tylenol at once on one occasion. All the foregoing, including the testimony of Boyd and the information related to the Respondent by Dr. Sippada, the Respondent argues, demonstrates a proclivity by Ward for drug abuse which justified its suspicion of her theft of the drugs involved herein. I am not so persuaded in view of the record as a whole.

Undisputed testimony of Ward established that in April she had broken her arm but, notwithstanding the injury, she continued her work for the Respondent. Thus, even though she may have requested a prescrip-

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obtain a narcotic prescription from her several times. Hill's testimony was unclear as to exactly when he was advised of this by Dr. Sippada. Dr. Sippada did not testify herein but had testified in an unemployment compensation hearing before the Georgia Department of Labor on Ward's claim for unemployment compensation. The decision of the administrative hearing officer favorable to Ward and referring to Dr. Sippada's testimony was received into evidence as G.C. Exh. 11. While not binding on the Board, the decisions of state employment commissions have probative value. *Duquesne Electric and Manufacturing Company*, 212 NLRB 142 (1974); *Aerowox Corporation*, 104 NLRB 246 (1953). Such decisions are not controlling, however. *Supreme Dyeing & Finishing Corp. and Valley Maid Co., Inc.*, 147 NLRB 1004, 1095, fn. 1 (1964). The decision of the administrative hearing officer, which was sustained by a board of review on October 30, 1980 (G.C. Exh. 12), has been fully considered.

[22] On this point, Hill's testimony differs from Twilley's. Hill testified that Ward was first confronted subsequent to this contact with Twilley. Twilley's version is the more likely one. Moreover, Twilley impressed me as generally more credible than Hill and he was obviously more disinterested.

tion pill for a painkiller from Brown,[23] the record does not establish that such request was not connected with a need related to an obvious injury rather than a proclivity toward drug abuse. With respect to Ward's request of Percodan from Lewis, the record does not establish that Lewis advised Hill or any supervisor of the matter prior to the accusation leveled at Ward about the theft of drugs. Similarly, it is not established that Hill or Johnson was aware of Ward's use of an abnormal dosage of Tylenol prior to the time that she was accused of drug theft. And, finally, under these circumstances, it is uncertain why Ward's name was ever mentioned to Boyd to prompt his revelation that she had asked him for prescription drugs. Accordingly, and in the absence of any real evidence of drug abuse or addiction by Ward, I conclude that a determined effort was made to lay the responsibility of the drug theft at Ward's doorstep, an effort more understandable in terms of the prevalent union activity than in terms of a well-founded suspicion of Ward's predisposition to drug abuse.

The circumstances of the drug theft are not clearly revealed on the record and this further indicates ulterior motivation in Ward's discharge. There was confusing and vague testimony by Hill and Johnson about how the theft was discovered and who discovered it, and precious little to tie Ward into the loss. Thus, Johnson testified she had contacted Boyd on May 10 or 12 about missing 2 Tylox, 6 Darvoset, and 15 Quaalude tablets. She related that the two Tylox tablets were missing from the narcotics box at the nurses station the day after the total prescription of 30 tablets had been received by Hudson. They were reported missing by Brown and Brooks, who were apparently on duty over the weekend of May 3 and 4. It is not clear which one actually discovered the Tylox missing. Nor is it clear that Ward worked that weekend, although, as already noted, Ward had been present when the Tylox were delivered.

Also, according to Johnson, Brown reported the Darvoset missing but again, even though missing narcotics would appear to be a serious matter, the record does not establish the date the drugs were missing or even the exact shift. The Respondent's general contention that Ward was on duty when either the Darvoset or the Tylox was discovered missing is not clearly established.

With respect to the missing Quaaludes, Johnson testified the Quaaludes were in her unlocked desk, although her office was locked during the times she was not at work. Johnson's testimony connecting Ward to the Quaalude theft is very vague. She testified with some uncertainty that she saw Ward in her office three times in May, but it is not clear whether either occasion was before or after the Quaalude loss. Indeed, the exact date of the Quaalude loss was never established. Finally, Johnson was vague as to the circumstances of Ward's presence in her office. On the other hand, Ward denied being in Johnson's office unless called in, except for one occasion when she used the physicians' drug reference in Johnson's office in the presence of Hill. She testified she left the office when Hill did. Here, I must credit Ward over Johnson's vague and uncertain testimony. In fact, Johnson's testimony in one respect seems to substantiate Ward, for she related that, once when Ward had been in the office, she had been talking to Hill.

The fact that Ward did not have access to the locked narcotics box at the nurses station, the fact that she did not dispense narcotics, and the failure of the Respondent to establish Ward's presence alone in Johnson's office at any time, much less at a time surrounding the discovery that drugs were missing from that office, clearly undermine any genuine belief on the Respondent's part that Ward was responsible for the drug loss. The fact that, contrary to the claim made on Ward's separation notice, there was no policy requiring nurses assistants to take polygraph tests as a condition of employment also militates against the existence of a real belief of Ward's responsibility for any theft. Moreover, no one except Ward, not even the charge nurses who clearly had access to the drugs, was required to take a polygraph examination. A genuine attempt to arrive at a solution to the disappearance of the drugs would appear to require a less discriminate application of the polygraph examination requirement.

But the hardest evidence of actual discrimination against Ward is found in Johnson's admission that drugs had been missing before and no one was fired whom she could recall. Moreover, there was no evidence that anybody else was ever required to take a polygraph examination as a condition of employment when drugs were missing. When this is coupled with Hill's additional admission that Twilley suggested to him at one point that he retain Ward where he could keep an eye on her rather than turn her loose to be hired by an unsuspecting nursing home if she was in fact inclined to steal drugs, a suggestion obviously rejected by Johnson, the discrimination against Ward stands out rather clearly.

Considering all the foregoing, and particularly the Respondent's failure to discharge employees or impose upon them as a condition of employment the taking of polygraph examinations when drugs were missing on previous occasions, I am not persuaded that the Respondent has successfully rebutted the General Counsel's *prima facie* case and established that Ward would have been discharged without regard to her union activities. True, Ward did initially volunteer to undergo the polygraph examination, but her subsequent reversal of position did not preclude the existence of discriminatory motivation when the Respondent imposed the taking of the test as a condition of employment and discharged her. I am convinced by the record as a whole, including the Respondent's strong union animus and the knowledge of Ward's union support, that the Respondent discharged Ward because of her union activity and to discourage employees in their union activities. In so doing, I conclude, the Respondent violated Section 8(a)(3) and (1) of the Act as alleged in the complaint.

5. Betty Hudson

Betty Hudson is a licensed practical nurse who was employed by the Respondent in February 1979 and worked as a charge nurse until her discharge on June 9.

[23] Here, while I was not impressed with the total credibility of either Lewis or Brown, I find them more believable than Ward in her denials regarding her request for the painkillers.

Generally, she worked on the 3 to 11 p.m. shift with two nurses assistants. Rose Johnson was her immediate supervisor.

Hudson attended union meetings when the union campaign began and related that she got some union authorizations cards signed. According to Hudson, around April 20 Hill called her into his office at the nursing home and asked her if she knew anything about the union activities in the home. She denied that she did. He asked if she knew of anyone passing out union cards, and she responded negatively. Hill then stated that he had heard from other employees that there was a union going on in the nursing home and that he would not allow this; he would close the nursing home. He said that, if Hudson knew of anyone passing out union cards, to let Hill know and he would take further action from there.

Around May 15 Hudson was given a written warning for being tardy after reporting to work about 20 minutes late due to her picking up and bringing to work another employee at Hill's request. Hudson did not immediately protest the receipt of the written warning on being tardy even though when Hill had asked her to pick up the other employee, she told him that she would be late if she did so.

Hudson next received a written warning dated May 29 (G.C. Exh. 15). This warning, signed by Hill, noted that Hudson did not seem to be "willing to supervise her nursing assistants to produce good nursing care." It noted that there had been cases of aides not performing their best and that Hudson had taken no action to remedy this although she had admitted to Hill that they were lacking in performance. Hill's warning also referred to the fact that Hudson had been late several times but that, when her tardiness was called to her attention and in writing, she had thereafter not been late. The warning observed that by putting the matter in writing, it was hoped that Hudson would take corrective action. Finally, the warning noted Hudson's potential of being the best LPN around and characterized Hudson's situation as a "small problem" which the written warning would likely serve to correct. Hudson testified that she discussed the warning with Hill, told him that she knew that a union was coming in, and referred to the fact that she had worked at another place where a union was trying to come in where she had worked for a year and a half without anything going into her personnel file until the employer started the process of "stacking the files."[24] Hudson accused Hill then of attempting to "stack her file " since she had signed a union card so he could fire her. Hill responded, according to Hudson, that this was not necessarily so and explained that he had been a sloppy administrator and, since he knew that the Union was trying to come in there, he had to write up little warning slips for each individual to show that he was trying to do his job. Hudson then asked with respect to the tardiness if he was going to write up the other people who were 10 to 15 minutes late, and Hill stated he was.

According to Hudson, on June 9 she was telephoned by Hill who told her that she was improperly supervising the nurses assistants, that he had hired another nurse to take her place, and she was fired. Subsequently, she picked up her separation notice from Hill. That separation notice, on the Respondent's letterhead, observed that a "charge nurse must supervise her nursing assistants and cannot do her job by sitting continuously at the desk." The paper went on to state:

> Ms. Hudson has caused trouble in many ways, here are a few of the most recent: Not properly orienting new nurses (assistants), by encouraging at least one nursing assistant to walk out on another shift, by encouraging her assistants to sit down and not work, and by making so many phone calls and receiving so many phone calls she could not possibly do her work, much less supervise her nursing assistants. Mrs. Hudson has been warned about all of the above several times.

The complaint alleges and the General Counsel argues that Hudson's discharge was based upon her union activities and the Respondent's knowledge thereof. In this regard, the General Counsel points to the May 29 memo or warning issued to Hudson which described the situation as a "small problem" when only 10 days later a discharge was effectuated without any significant intervening events, other than Hudson's specific revelation to Hill on May 29 that she had signed a union card.

The Respondent's defense is predicated primarily on its contention that Hudson was a supervisor within the meaning of the Act. In addition, the Respondent asserts that it had cause for Hudson's discharge. In regard to the latter, Johnson testified that two nurses aides, Louise Counch and Sandra Rencer, had complained to her in either May or June about no one on the 3 to 11 p.m. shift helping them perform tasks with the patients. Johnson vaguely recalled that Counch said that all the nurses assistants did on the 3 to 11 shift was sit around and talk on the telephone. Johnson stated she reported these matters to Hill. The Respondent called Evelyn Lewis, a former patient, who testified that Hudson was inattentive to a roommate's needs, and she observed Hudson, as well as the other nurses assistants on the shift, frequently on the telephone.

Hill testified with respect to Hudson that he had spoken to her two or three times about coming in late, and on May 6 had given her a warning. In addition, he had warned her, he testified, for tying up the telephones and had counseled her for not supervising her shift during mid-May. He testified that he warned her that, if she did not start supervising better, it could mean her job. Nevertheless, he stated, he continued to receive complaints after mid-May from the 11 p.m. to 7 a.m. shift, specifically, Mary Lewis and Helen Brown, about

[24] Hudson testified that she had worked for another employer from whom she had been fired as a result of union activity. A charge had been filed in her behalf, and the case had subsequently been settled but without her reinstatement. Employee Helen Brown was also named as a discriminatee in that prior Board case, and testimony was elicited by the Respondent from Brown seeking to establish some conspiracy on the part of Hudson and the other discriminatees as well as Union Representative Joyce Brown regarding the failure to report to the Board interim earnings in connection with the settlement discussions. Brown's testimony in this regard is vague, at times uncertain, and completely unconvincing. I do not credit such testimony.

the way they would find conditions when they reported to work to relieve Hudson and her aides. He denied that the union activities played any part in his decision to terminate Hudson.

With respect to the issue of Hudson's supervisory status, Hudson disclaimed any supervisory authority although she admitted that she was, in effect, in charge of the nursing home after the day-shift employees had left, including the director of nursing, Johnson, and the administrator, Hill. Moreover, Hudson admitted that she retained keys to the administrative offices during the second shift and had access to the offices and the personnel files contained therein in the event it became necessary to look up a telephone number to call to work an additional employee.

Hudson admittedly signed a job description on January 8 which set forth that she had the responsibility to act in a capacity of leadership on a unit under the supervision of either the director or assistant director of nursing. The job description also sets forth that she was to serve as a leader of personnel on the unit and was responsible for maintaining care of the unit nursing station and was required to report all ward conditions, maintenance and medical, to the appropriate office. Further, with respect to performance on the job, the job description specified that she was to assist in the training and supervision of nursing service personnel. (G.C. Exh. 13.)

Hudson conceded that she was asked to and did evaluate the work of at least one employee, Nancy Middlebrooks, in July 1979 (Resp. Exh. 17).

Johnson testified that Hudson, as other charge nurses, had the authority to suspend employees for violating conditions set forth in the personnel policies of the nursing home. Moreover, charge nurses had the authority to rearrange or change schedules of employees, to make schedules, and to assign work. Hill in his testimony stated that the charge nurses, based upon the employee performance reviews filled out by them, did have "input" into the salary and merit salary increases for nurses assistants. Hill further related in his testimony on cross-examination that charge nurses would have the authority to terminate employees who reported to work under the influence of alcohol or drugs. Finally, Hill asserted that he considered all the charge nurses to be supervisors.

The General Counsel and the Union contend that any authority that the charge nurses possessed grew out of, and was incidental to, their status as licensed practical nurses. See *Milwaukee Children's Hospital Association*, 255 NLRB 1009 (1981). Furthermore, the General Counsel argue that the Respondent's agreement with the Union to allow the charge nurses to vote in the representation case election establishes that the charge nurses were not supervisors.

Notwithstanding the agreement of the Respondent to allow the charge nurses to vote in the election, I am compelled to conclude that Hudson possessed the statutory indicia of supervisory status. In reaching this conclusion, I note particularly the authority of charge nurses, and Hudson in particular, to evaluate the performance of employees, an evaluation which apparently proved to be effective in the case of Nancy Middlebrooks, who the record shows was given a raise following Hudson's evaluation. In addition, I note that, if Hudson as the charge nurse on the second shift and the charge nurses on the third shift were not deemed to be supervisors, the Respondent's nursing home would be operating for a substantial number of hours per day without the presence of any supervisory authority. Considering the nature of the Respondent's operation as a nursing home, I find it unreasonable and illogical that such a situation would be permitted to exist. See *Wright Memorial Hospital*, 255 NLRB 1319 (1981). Moreover, it is clear that Hudson as charge nurse had access to the administrative offices and personnel files and could utilize information in those files to call in employees if the necessity arose.

Because I have found Hudson to be a supervisor, I deem it unnecessary to determine whether or not her discharge was based upon her involvement in union activities. Even if Hudson's discharge were based upon her involvement in union activities, it is well settled that while an employer may violate Section 8(a)(1) of the Act in the discharge of a supervisor, in certain situations, the discharge of a supervisor solely for that supervisor's own union activities does not constitute a violation of the Act. See *Daniel Construction Company, a Division of Daniel International Corporation*, 244 NLRB 704 (1979). Moreover, since I find Hudson to be a supervisor, I find no independent 8(a)(1) violations based on any questions of her or threats made to her by Hill.

B. *Alleged Additional 8(a)(1) Violations*

The complaint alleges a number of additional violations of Section 8(a)(1) of the Act by the Respondent through the actions and statements of Hill. Thus, nurse assistant Eva Thompkins testified that Hill called her into his office where he talked to her alone and where he asked her if she knew anything about a union, and Thompkins replied that her husband was a union member. Hill then asked her if she heard anything, to let him know. She could recall nothing further about the conversation with Hill in his office and was uncertain about the date it occurred, finally testifying that it was about 3 weeks prior to a general meeting of staff members on Thompkins' shift called by Hill and attended by Hill's lawyer at which Hill talked about the Union and read some remarks to the employees.

Hill denied the questioning attributed to him by Thompkins. Thompkins impressed me as truthful and her veracity regarding Hill's questioning of her was not seriously impaired by cross-examination. Based on Hill's admission that he read a speech to employees on May 21, I conclude that Hill's questioning of Thompkins took place in early May, a time when the credited testimony of other employees already noted establishes that Hill was in the process of questioning employees about union activity. I find that Hill's questioning of Thompkins constituted unlawful interrogation and an unlawful solicitation to report union activities, both violations of Section 8(a)(1) of the Act.

Nurse assistant Judy Gholston related in her testimony that she was called into Hill's office where he talked to

her alone and asked her if she knew anything about the Union. He also asked her who was the leader of the Union, who started things. Hill related to Gholston in the conversation which she places as occurring sometime in May that the "nursing home was too small for a union, that the Union would take out a certain amount of money for dues and the nursing home would be closed within six months because he wouldn't have any money to pay anybody . . . ." Hill then referred to another nursing home where during a strike, union employees had had their tires cut.

Hill generally denied Gholston's allegations. Gholston's testimony was vague at points and a portion of it was elicited by the General Counsel through leading questions. Nevertheless, Gholston in demeanor conveyed the impression of sincerity, and the questioning which she attributed to Hill is clearly consistent with a pattern of such questioning by Hill established in other credited testimony herein. I therefore credit Gholston with respect to the office interview with Hill, and I conclude, based on her testimony, that Hill unlawfully interrogated her and threatened that the nursing home would be closed if the Union were selected, all in violation of Section 8(a)(1) of the Act.

Annie Mapp, a nurses assistant, testified for the General Counsel that she had a 4- to 5-minute conversation with Hill about 2 months prior to the June 20 representation election. Mapp placed the conversation as taking place in Hill's office where Hill asked her if she knew anything about the Union, and she replied that she had only seen some pamphlets lying around and added that her husband was in a union, but that was about all she knew. Hill then, according to Mapp, indicated that their discussion was "off the record" and then added something to the effect that maybe they would learn about the Union together. While Mapp's testimony was vague at points, she appeared basically honest. Moreover, her testimony is particularly plausible because it fits a pattern of interrogation by Hill of employees regarding union activities. Accordingly, I credit Mapp and find that Hill unlawfully interrogated her in violation of Section 8(a)(1) of the Act.

Employee Hawkins testified that she was approached at work by Hill sometime in late May after the discharge of Stanley Lark, and Hill asked her and some other employees present to vote no. Directing his remarks to Hawkins, Hill, according to Hawkins' credited testimony, told Hawkins that he had paid her rent for her,[25] had started a retirement fund for employees, and had given them a savings account. While the General Counsel's brief suggests that Hill's remarks to Hawkins were an unlawful statement that he had more to offer employees if they refrained from joining the Union, I do not view Hawkins' testimony as establishing such a violation. Rather, it appears, and I conclude, that Hill's remarks to Hawkins were a simple reminder of his benevolency in the past. Notwithstanding other violations of the Act found herein, I do not construe Hill's remarks as either a promise of greater benefits in return for a no vote or a threat to eliminate past benefits. Accordingly, I base no finding of a violation of the Act upon Hawkins' testimony in this regard.

While not specifically alleged in the complaint, the General Counsel relied upon the testimony of housekeeping employee Frank Calloway, Jr., to show that Hill solicited Calloway to engage in surveillance of a union meeting. Thus, Calloway testified that sometime about a month or two after the discharge of employee Lark in late May, as he was preparing to leave work, Hill asked him, "Are you going up there to the union meeting?" Calloway inquired as to what meeting, and Hill responded, "Up there at Everybody's," and asked, "Would you mind going up there to see who is there and come back and let me know?" Calloway testified that he did go to a union meeting at Everybody's and "everybody" was there. However, after the meeting he went on home where he was telephoned by Hill who asked him if anybody had been "up there." Calloway answered negatively.

Hill denied Calloway's testimony. Although Calloway's testimony was elicited through some leading by the General Counsel, Calloway appeared truthful. Moreover, the content of his testimony is in keeping with Hill's already exhibited curiosity regarding union supporters. Still further, Calloway at the time of the hearing, like many of the General Counsel's other witnesses with the exception of the alleged discriminatees, remained an employee of the Respondent and, thus, may be considered as testifying adversely to his pecuniary interest. See *Golden Standard Enterprises, Inc., et al.*, 234 NLRB 618, 619 (1978); *Georgia Rug Mill*, 131 NLRB 1304 (1961), modified 308 F.2d 89, 91 (5th Cir. 1962). Accordingly, I credit Calloway in the matter, and, because I deem the matter to have been litigated, I conclude on Calloway's testimony that Hill's solicitation of Calloway to attend the meeting and report back to him constituted interference violative of Section 8(a)(1) of the Act.

There was testimony from a number of employees regarding a group meeting between Hill and the employees also attended by Hill's attorney, Richard Wolfe. Hill gave a talk to the employees in these meetings, a talk which, according to the General Counsel's witnesses, contained coercive remarks alleged as violations of the Act in the complaint. In this regard, Mary Hawkins testified that, in the meeting she attended which took place on May 21, Hill told the employees that they did not need a union, that the place was too small for a union, that the place would be closed in 6 months if they got a union, and that they would have to pay union dues. Hawkins identified employees Mapp, Thompkins, Lark, Calloway, and Nancy Middlebrooks as being present. Calloway did not testify concerning the meeting. Although Lark related he attended such a meeting, he did not recall any of Hill's remarks. Nancy Middlebrooks was not called to testify. Thompkins testified that in the meeting she attended Hill stated that, if the Union came in, he might have to close down the nursing home because he could not afford it. Mapp testified that all the day-shift employees attended the meeting, and Hill said

[25] Hawkins explained that in February Hill had loaned her some money to pay her rent.

that it was a small nursing home and he did not know what would happen if the Union came in, that he might have to close down and "we would all be out of a job." He also referred to another nursing home where a union had tried to come in and they had trouble such as some tires being cut. Housekeeping Supervisor Albert Roberts, who was identified by Mapp as being at the same meeting she attended, testified for the General Counsel that Hill read a statement to the employees in which he said that the employees did not need a union and the nursing home might have to be closed down. Judy Gholston testified that she attended the meeting and related that Hill said that if they wanted the nursing home to stay open, the best bet was to vote no.[26]

Charge nurse Hudson related in her testimony that, when she came in on the evening shift, Hill read a two-page statement to her and Nancy Middlebrooks in the lounge regarding the Union. Hudson said that Hill prefaced his statement saying that he had had a meeting earlier in the day with the employees and that he wanted to brief them on it. In his statement, according to Hudson, Hill remarked that he could offer more than the Union could offer, better benefits, that he did not want a union in the nursing home, that the employees and the Respondent were a family and had to stick together, that he would close the nursing home before he would allow the Union to come in. He also added that he could not give raises the first of June because there was a "freeze" or "somebody" had a freeze on raises although he had promised a raise during the first of June.

Hill did not deny having group meetings with employees on May 21, but claimed he read a two-page statement to the employees which did not contain the remarks attributed to him by the employees related above. The statement which Hill claimed he read was identified by Hill and received in evidence (Resp. Exh. 30). It contains, *inter alia*, the following language:

> The Union has told you if they get into our convalescent home, they will do a good job for you; that they will provide you with higher wages and better benefits, than you now have. Remember, promises like these are cheap when you don't have to deliver. Only Emory Convalescent Home can deliver.
>
> We feel our past record speaks for itself. Without a union, you, as our employees, have received wage increases. Without a union, you have been provided with a health insurance plan, paid vacation, retirement fund and a Christmas bonus, assuming your work is good and the facility financial situation permits; and you are secure in the knowledge that if you have any problems, you can come directly to me with them. You have gained all these benefits without a union, without strikes, and without paying one penny in dues to any outside organization.
>
> If the union were to come into our convalescent home, the only obligation we would have is to bargain in good faith with the union. We do not have to agree to any demands the union makes which are considered unreasonable. You must understand that collective bargaining in a two-way street. You can lose as well as gain. This means that everything is up for negotiation, including the benefits and wages you now have.
>
> There is only one way in which the union can try and force us to agree to its demands and that is by going on strike. You all know what a strike is and the hardship it can bring to you and your family, but what you probably don't know is that we, the facility, may permanently replace employees that go on an economic strike. We do not want to see this convalescent home forced to close. Let's face it, the only thing this union really wants is your money, and they don't care who they hurt to get it.

Hill testified that he told the employees both before and after reading his speech he did not intend to threaten or coerce anyone.

There is a reference to a closing of the nursing home in Hill's statement which, although couched in lawful terms, could be misinterpreted by employees as an unlawful threat of closure based solely upon employee organization by the Union. I am persuaded that the vague subjective and incomplete recollections of the employees regarding Hill's speech is less reliable than Hill's testimony regarding the speech supported by the written copy of it. Indeed, Gholston during cross-examination in effect substantiated Hill's testimony by recognizing a number of comments set out in the written version of the speech. In addition, I find it very unlikely that Hill would have made a direct threat to close the facility in the presence of his attorney. Accordingly, in this instance I credit the testimony of Hill regarding the speech and I find no unlawful threat of closure in the speech.

The foregoing does not resolve the issue presented by Hudson's testimony regarding the separate reading of a speech to her in the presence of Middlebrooks, for the remarks of Hill to Hudson contained a reference to a "freeze" on wages. There was no reference to such a freeze in the prepared remarks which, in this instance, was not given in the presence of Hill's attorney. Moreover, while Hill denied that he had withheld any scheduled raises or wage increases, he did not specifically deny that he referred to a freeze in talking to Hudson and Middlebrooks. Thus, and because I find Hudson's testimony on the point credible, I conclude that Hill did state that a freeze was in effect on wages. While there was some testimony by the General Counsel's witnesses Hawkins and Gholston that a wage increase was announced to the employees in April, it is not clear that they did not get an increase at some point or another and the complaint does not allege that a specific wage increase was withheld. Hill conceded that a wage increase announcement was made in April, but claimed the raise

[26] Gholston also testified Hill also stated that he would be giving raises, but then testified he said he had given raises, and, finally, that he said the employees were supposed to get a raise, but his lawyer's fees were so high the employees would only get a raise later. While Gholston appeared sincere, she exhibited obvious confusion about any reference Hill made to raises. I therefore place no reliance on her testimony in this regard.

was to be effective in June. I cannot conclude that the Respondent actually withheld a general wage increase from the employees. However, it is clear that an employer's obligation regarding wage increases in the face of a union organizational campaign is to do that which it would have done in the absence of a union campaign. See, e.g., *KDEN Broadcasting Company, a wholly owned subsidiary of North American Broadcasting Company, Inc.*, 225 NLRB 25 (1976); *Russell Stover Candies, Inc.*, 221 NLRB 441 (1975). Hill's statement to Hudson in the presence of Middlebrooks coupled with his stated opposition to the Union clearly implied that no increases would be considered because of the union campaign. I therefore find his remark to Hudson in the presence of Middlebrooks regarding a freeze was coercive and violative of Section 8(a)(1).

C. *The Challenged Ballots*

Having concluded that the Respondent's discharge of Barbara Holman, Stanley Lark, and Diane Ward was unlawful, it follows that the challenges to their ballots should be overruled. It likewise follows that, since I have found that the discharges of Dianna Middlebrooks and Betty Hudson were not unlawful, the challenges to their ballots should be sustained. In accordance with the order directing bearing on challenged ballots and the order consolidating Case 10-RC-12106 with Cases 10-CA-15914 and 10-CA-15947, I recommend that the challenges to the ballots of Barbara Holman, Stanley Lark, and Diane Ward be overruled, that their ballots be opened and counted, that the challenges to the ballots of Dianna Middlebrooks and Betty Hudson be sustained, that the tally of ballots be revised to reflect the result of the foregoing, and that the results of the election be certified.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By interrogating employees concerning their union activities and the union activities of other employees; by expressing the futility of their organizational efforts by telling employees that the Union would do nothing for them; by threatening to withhold or freeze wage increases because of union activities of the employees; by threatening employees that it would close its nursing home if they selected a union to represent them; and by requesting employees to attend a union meeting and report back to it, the Respondent interfered with, restrained, and coerced employees in the exercise of rights protected by Section 7 of the Act, and thereby engaged in, and is engaging in, unfair labor practices prescribed by Section 8(a)(1) of the Act.

4. By discharging Barbara Holman and Diane Ward, and by evicting and discharging Stanley Lark, all because of their assistance to and support of the Union, thereby discouraging membership in the Union, the Respondent engaged in, and is engaging in, unfair labor practices proscribed by Section 8(a)(3) and (1) of the Act.

5. The unfair labor practices set forth in paragraphs 3 and 4 above, occurring in connection with the Respondent's operations, affect commerce within the meaning of the Act.

6. The Respondent did not violate Section 8(a)(3) and (1) of the Act in discharging Dianna Middlebrooks and Betty Hudson.

7. Except to the extent set forth in paragraphs 3 and 4 above, the General Counsel has failed to prove by a preponderance of the evidence that the Respondent engaged in any other unfair labor practices alleged in the complaint.

THE REMEDY

Having found that the Respondent interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act, and further having found that it unlawfully evicted one employee from resident quarters, and discharged that employee and two others for their union activities in order to discourage membership in a union, I shall recommend that the Respondent be required to cease and desist from such conduct and take affirmative action designed and found necessary to effectuate the policies of the Act.

Having found that the Respondent unlawfully discharged Barbara Holman, Stanley Lark, and Diane Ward, I shall recommend that the Respondent be required to offer them full reinstatement to their former positions without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings they may have suffered by reason of their termination. Backpay with interest thereon is to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[27]

Since I have also found that the Respondent discriminatorily evicted Stanley Lark from a Respondent-owned apartment which was provided him rent free as compensation for additional duties, I shall recommend that the Respondent be ordered to offer Lark immediate occupancy to his former quarters on the same terms previously accorded him, and make him whole for any loss he may have suffered by reason of the discriminatory eviction by payment to him of a sum of money equal to that which he had to pay as rental for other living quarters from the date of his eviction to the date he is offered reinstatement and occupancy in the manner set forth above, plus any additional expenses he may have incurred during the period of eviction and resulting from the eviction.

Upon the foregoing findings of fact and conclusions of law and the entire record in this case, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

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[27] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

ORDER[28]

The Respondent, Emory Nursing Home, Inc., d/b/a Emory Convalescent Home, Atlanta, Georgia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees regarding their own and other employees' membership in, or activities on behalf of, Health Care Employees Local #1348 of the Laborers International Union of North America, AFL-CIO.

(b) Expressing to employees the futility of their organizational efforts by telling them that the Union would do nothing for them.

(c) Threatening to withhold or to freeze wage increases because of employees' union activities.

(d) Threatening employees with a closing of the nursing home if the employees selected a union to represent them.

(e) Requesting employees to attend union meetings and report back to it.

(f) Discriminatorily discharging, evicting, or otherwise discriminating against employees because of their membership in, or activities on behalf of, the above-named or any other labor organization.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative action found necessary and designed to effectuate the policies of the Act:

(a) Offer Barbara Holman, Stanley Lark, and Diane Ward immediate and full reinstatement to their former jobs or, if their jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for their lost earnings in the manner set forth in section entitled "The Remedy."

(b) Offer to Stanley Lark immediate occupancy to his former or equivalent living quarters at the Respondent's facility on the same terms previously accorded him, and make him whole for any loss he may have suffered by reason of his discriminatory eviction in the manner set forth in the section entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its place of business in Atlanta, Georgia, copies of the attached notice marked "Appendix."[29] Copies of said notice on forms provided by the Regional Director for Region 10, after being signed by an authorized representative, shall be posted immediately and maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps Respondent has taken to conply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act other than those found above.

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[28] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions and recommended Order herein shall, as provided by Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions and Order, and all objections thereto shall be deemed waived for all purposes.

[29] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."